

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

STANDARD CONTRACT

CONTRACT NO. [year]-[number of contract]

1. **PARTIES** - The parties to this Contract are the Bay Area Air Quality Management District (referred to herein as "DISTRICT") whose address is 939 Ellis Street, San Francisco, CA 94109, and [name of company or individual] (referred to herein as "CONTRACTOR") whose address is [address, city, state, zip].
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in Attachment A - Scope of Work and Additional Provisions, attached hereto and made a part hereof by this reference. CONTRACTOR attests that it is well-qualified to provide such services on the terms set forth herein. DISTRICT is entering into this Contract based on CONTRACTOR's expertise.
 - B. All parties to this contract have had the opportunity to have this contract reviewed by their attorney.
3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall not engage, during the term of this contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work attached hereto.
 - D. CONTRACTOR shall be responsible for exercising the degree of skill and care customarily required by accepted professional practices and procedures subject to the DISTRICT's final approval which the DISTRICT will not unreasonably withhold. Any costs incurred due to the failure to meet the foregoing standards, or to otherwise remedy defective services which require re-performance, as directed by DISTRICT, shall be the responsibility of CONTRACTOR. CONTRACTOR's failure to achieve the performance goals and objectives stated in Attachment A- Scope of Work and Additional Provisions, is not a basis for requesting re-performance unless work conducted by CONTRACTOR is deemed by DISTRICT to have failed the foregoing standards of performance.
 - E. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this CONTRACT shall abide by paragraph D above.
4. **TERM** - The term of this Contract is from [date] to [date], unless further extended by amendment of this Contract in writing, or terminated earlier. No work set forth in this contract shall commence until this contract is fully executed by all parties.
5. **TERMINATION**- In the event any party fails to comply with any term or condition of this Contract, including, but not limited to, the requirements of Attachment A - Scope of Work and Additional Provisions, or fails to provide the services in the manner agreed upon by the parties, this failure shall constitute a breach of the Contract. The non-breaching party, at its sole discretion, shall have the option of either (1) notifying the breaching party that it must cure this breach or (2) providing written notification of at least 10 business days of its intention to terminate this Contract. Notification shall be provided in the manner set forth in Section 11. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. By [date], CONTRACTOR shall furnish evidence to the DISTRICT of workers' compensation insurance for each of its employees in accordance with either California or other applicable statutory requirements.
- B. By [date], CONTRACTOR shall provide evidence of a liability insurance with a combined single limit (general and automotive) of one million dollars (\$1,000,000). DISTRICT shall be named as an additional insured on any such liability policy, and thirty (30)-days prior written notice of cancellation or modification of any such insurance shall be given by CONTRACTOR to DISTRICT. Any such modifications are subject to pre-approval by DISTRICT.
- C. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.

7. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, indemnify, and defend DISTRICT, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, or expenses which DISTRICT, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage caused or incurred by CONTRACTOR, its employees, subcontractors, or agents, in the performance of this Contract.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for work performed under this Contract in accordance with Attachment B - Cost Schedule, attached hereto and incorporated herein by this reference. Payment of such compensation shall be made by DISTRICT to CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice prepared and furnished by CONTRACTOR showing services performed, referencing tasks as shown in Attachment A – Scope of Work and Additional Provisions, the hours associated with same, or percentage completion thereof, and the amount of charge claimed.
- B. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, the period covered by the invoice, and CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, Attn: Contracts Manager.
 - ii) Charges for equipment, material, supplies, travel expenses, work of subcontractors, and other charges, as applicable, must be first approved in writing by the District's representative and itemized by CONTRACTOR. DISTRICT shall not pay interest, fees, handling charges, or cost of money on Contract.
- C. DISTRICT shall reimburse CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment A – Scope of Work and Additional Provisions of this Contract or pre-authorized by DISTRICT in writing.
- D. DISTRICT reserves the right to deduct a percentage of the fees set forth in Attachment B – Cost Schedule when the services described in Attachment A – Scope of Work and Additional Provisions, are not performed satisfactorily in DISTRICT's sole judgment. The portion so deducted shall be DISTRICT's best estimate of the value of work not performed.
- E. The total amount for which the DISTRICT may be held liable for the performance of work specified in this Contract, including any authorized travel-related expenses, shall not exceed [amount].

9. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT unless otherwise agreed to in writing.

10. DISPUTE RESOLUTION – The parties agree to comply with the following procedures in resolving certain disputes that may arise under this Contract:
- A. Any dispute arising between DISTRICT and CONTRACTOR regarding whether CONTRACTOR has provided services consistent with DISTRICT’S requirements set forth in Attachment A – Scope of Work and Additional Provisions, shall first be settled by mediation subject to the following requirements:
 - i) Mediation shall be governed by the Commercial Mediation Rules of the American Arbitration Association (“Association”), and the mediator shall be selected by the Association.
 - ii) The party seeking mediation shall provide the other party with a written demand of this request within thirty (15) days of the dispute. Each party shall bear its own costs during the mediation proceedings.
 - iii) The mediation session(s) shall, within thirty (30) days after receipt of the demand for mediation, be held at DISTRICT’S headquarters, or at such other place as may be mutually agreed upon by the parties and mediator, and at such time as is also agreed upon.
 - B. In the event the parties are unable to mediate their dispute, either party may file an action in a court of competent jurisdiction.
 - C. The term of this Contract and the time for performance set forth in Attachment A – Scope of Work and Additional Provisions shall be extended automatically for the period of time during which the parties are engaged in alternative dispute resolution as set forth in Paragraph A, above.
 - D. The prevailing party in alternative dispute resolution shall be entitled to costs and reasonable attorneys’ fees in addition to any other relief to which it may be entitled.
 - E. Maximum recovery under this section shall be limited to [dollar amount equal to value of the contract].
11. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt on the return receipt card.

DISTRICT: Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attn: [name]

CONTRACTOR: [company or individual name]
[street address]
[city, state, zip]
Attn: [company contact]

12. ADDITIONAL PROVISIONS Any attachment(s) to this Contract contain additional provisions which are expressly incorporated herein by this reference and made a part hereof as though fully set forth at this point.
13. EMPLOYEES OF CONTRACTOR
- A. CONTRACTOR shall assign those employees listed in Attachment B to perform the work specified herein. CONTRACTOR shall not assign different employees to perform this work without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
 - B. DISTRICT reserves the right to review the resumes of any of CONTRACTOR’s employees selected to perform the work specified herein and to disapprove CONTRACTOR’s choices. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.
 - C. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.

- D. CONTRACTOR, its officers, employees, agents, or representatives shall in no sense be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

14. CONFIDENTIALITY - It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner the information which CONTRACTOR obtains from DISTRICT as confidential and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this paragraph.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this paragraph. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this paragraph.

15. PUBLICATION

- A. DISTRICT shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from DISTRICT in connection with performance under this Contract.
- B. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT'S PUBLIC RECORD unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to DISTRICT. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (DISTRICT). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of DISTRICT. DISTRICT, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. DISTRICT has not approved or disapproved this report, nor has DISTRICT passed upon the accuracy or adequacy of the information contained herein.”

- C. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.

16. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this paragraph and shall include in each such subcontract language similar to this paragraph.
19. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.
20. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or DISTRICT to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
21. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
22. FORCE MAJEURE - Neither DISTRICT nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of DISTRICT or CONTRACTOR.
23. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
24. HEADINGS - Headings on the paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
25. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
26. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be San Francisco, California.
27. ENTIRE CONTRACT - This Contract represents the entire agreement between the parties hereto related to CONTRACTOR providing services to DISTRICT and there are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

[company name]

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
[name]
[title]

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bunger
District Counsel

ATTACHMENT A

SCOPE OF WORK AND ADDITIONAL PROVISIONS

[language incorporating and describing the work and equipment included in CONTRACTOR'S proposal]

Performance Bond

CONTRACTOR agrees to furnish to DISTRICT a performance bond in the amount of 100% of the Contract amount, which must be delivered to DISTRICT concurrent with CONTRACTOR 's execution of this Contract. The performance bond may be in the form of a cashier's check, a certified check, or a surety bond. If a surety bond is executed, the surety company must be authorized to do business in the State of California as approved by the California Department of Insurance. The performance bond shall be made payable to DISTRICT and shall be effective throughout the life of the Contract including any extension of the Contract term. Any change in work, extension of time, or termination of this Contract, if any, made pursuant to this Contract, shall in no way release CONTRACTOR or any of its sureties from any of their obligations. Such bond shall contain a waiver of notice of any change to this Contract. Notwithstanding any other provisions relating to the beginning of the term, this Contract will not become effective until the performance bond required by this Contract is delivered in the correct form and amount to:

[business manager]
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Project Status Meetings

CONTRACTOR agrees to conduct periodic project status meetings to be held at DISTRICT's premises from the effective date of this Contract to completion of roll-out. The frequency of these meetings shall be every two weeks, unless otherwise agreed to by the parties.

Changes in Work

In the event DISTRICT requires a major change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to the COMPENSATION shall be determined by DISTRICT in the exercise of its honest and reasonable judgment and CONTRACTOR shall not commence the additional work or the change of the scope of the work until authorized in writing by DISTRICT and no claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto. Changes shall be effected using the procedures outlined in the General Statement of Work.

Detailed Design Review

Prior to implementation, CONTRACTOR will conduct a Detailed Design Review with DISTRICT's project team to finalize the system configuration and design. Neither site development work nor installation shall begin until DISTRICT approves the final system design.

Acceptance Testing

Acceptance Test Plan (ATP). CONTRACTOR shall deliver to DISTRICT for approval an ATP which shall not materially differ from the ATP included in the initial Proposal, except as required by additions and changes to the System made after the Proposal was prepared. The revised ATP must identify all tests to be conducted, and shall provide for adequate testing of all aspects of the System. The ATP must identify Acceptance test criteria for each of the following categories:

- A. System Functionality – The functionality test must show compliance of the integrated System and its components with the functionality requirements detailed in this Contract.
- B. System Coverage – The coverage tests shall demonstrate the System's compliance with CONTRACTOR's coverage guarantee, i.e. that the System provides intelligible voice coverage not less than the coverage for the agreed upon design depicted in the coverage maps, as submitted by CONTRACTOR and its associated data sheets.

The tests shall require CONTRACTOR to demonstrate compliance with these requirements on a statistically valid, topographically representative basis for transmission and reception at a Delivered Audio Quality of 3.4 (DAQ) or equivalent. Signal strength testing shall be used to supplement voice testing, but signal strength will not replace voice testing.

- C. System Reliability – A Reliability Test, as further defined in the ATP, shall be conducted as part of System Acceptance. The Test shall commence upon successful completion of the testing described above. During the Reliability Test, the System shall operate without a Major System Failure for a period of 60 days. A Major System Failure is defined as:
 - (1) Inability to operate two (2) or more radio consoles in one dispatch center
 - (2) Inability to operate a radio transmission site
 - (3) Inability to operate any site in multi-site mode of operation
 - (4) Inability to operate two (2) or more channels at two (2) or more sites
 - (5) Multiple failures of the key System components, which is equal to or greater than fifteen percent (15%) of the number of all such components. "Key System components" shall refer to all integrated multi-site controllers, site controllers, consoles and stations provided by CONTRACTOR under this Contract.
 - (6) If, during the Reliability Test, the System experiences a Major System Failure, CONTRACTOR shall then take the necessary steps to correct the deficiencies and a new 60-day Reliability Test will begin. If the Reliability Test is stopped due to an Excusable Delay, the test shall resume at the end of time allowed for the delay and the 60-day period will not be restarted.

Upon successful completion of the acceptance testing, CONTRACTOR shall provide DISTRICT written notification and documentation that the System has successfully passed the ATP. Upon receipt of such notification and documentation, DISTRICT shall review the documentation and determine whether to accept the System. If DISTRICT decides to accept, which DISTRICT agrees acceptance will not be unreasonably withheld, DISTRICT will provide written notification to CONTRACTOR.

Clarification Procedures

The Parties shall have a maximum of fifteen (15) business days from the receipt of written correspondence from one party to the other in which to respond, in writing, to the clarification, proposed solution or any other situation requiring a written response from the other Party. If the receiving Party believes the contents of such correspondence do not conform to the requirements of this Contract, or otherwise disagrees with such correspondence, it shall so notify the sending Party, in writing, within the fifteen (15) business days, defining in detail such non-acceptance.

In the event the receiving Party finds the content of the correspondence conforming to the requirements of this Contract, it shall, within the above stated fifteen (15) business days, notify sending Party, in writing, of this fact, and such notification shall constitute final acceptance of the content of the correspondence delivered. Should the receiving Party fail to respond within fifteen (15) business days, the content of the correspondence shall be deemed accepted except as otherwise herein provided.

Warranties and Remedies

The warranty period on the equipment provided by CONTRACTOR shall be one year from the time of acceptance.

CONTRACTOR also warrants that all products including hardware and software will perform in accordance with the terms of this Contract. All scheduled preventative maintenance shall be included in this Warranty.

The equipment supplied under this Contract will be new, not refurbished, hardware. The hardware will incorporate all the then current (from one month prior to date of shipment) manufacturer required engineering changes that have been publicly released, and the hardware shall be in proper working order and qualified for maintenance services by the manufacturer. The software used for the system shall be the most current, applicable release as of the Contract date.

If during the warranty period specified above DISTRICT discovers that the equipment provided by CONTRACTOR under this Contract is not in accordance with the express warranty set forth above, CONTRACTOR shall, without charge to DISTRICT, be responsible to repair or replace such equipment to the extent necessary to correct such defects in a timely manner.

CONTRACTOR also warrants that the Contract will be performed in a professional and workmanlike manner, and according the terms of this Contract and all technical manuals, operator manuals, and written specifications as well as any other documentation specific to this Contract.

If during the warranty period specified above DISTRICT discovers that, the services performed by CONTRACTOR under this Contract had not been performed in accordance with the express

warranty set forth above, CONTRACTOR shall, without charge to DISTRICT, re-perform such services to the extent necessary to correct the fault therein in a timely manner.

Maintenance

Maintenance service for the System, and software support for the software, shall be available to DISTRICT at the second through eleventh year guaranteed prices shown in Attachment B. If DISTRICT retains CONTRACTOR's maintenance services, CONTRACTOR shall maintain the system during the maintenance system as it shall be maintained during the warranty period.

Risk of Loss/Damages

CONTRACTOR bears entire responsibility, cost and risk of loss for equipment while under CONTRACTOR's custody or control prior to Acceptance by DISTRICT. Risk of loss or damage to the System and its components shall remain with CONTRACTOR until it passes to DISTRICT as follows:

- A. for the backbone and equipment delivered prior to Acceptance, upon Acceptance;
- B. for user equipment, upon acceptance after programming (and installation as appropriate); and
- C. for all additional equipment delivered after Acceptance, upon written receipt of delivery for portable radios and installation of mobile radios, and delivery of any other such items of equipment.

CONTRACTOR warrants that the equipment shall be free and clear of any liens, encumbrances, charges, duties, and assessments when title passes. In subsequent phases, CONTRACTOR shall be liable for damages if DISTRICT can reasonably prove that CONTRACTOR was negligent in the installation and maintenance of the equipment while the equipment was in its control or custody prior to Acceptance.

Title

DISTRICT will acquire good and clear title to equipment upon FOB Delivery for each such item of equipment by DISTRICT, without regard to payment.

Delivery

CONTRACTOR will not deliver any user equipment such as mobile or portable radios prior to Acceptance unless approved by the Project Manager. All deliveries of equipment shall be in accordance with the implementation schedule, but no more than 30 days prior to installation, and accompanied by a letter of transmittal which shall be acknowledged in writing by the Project Manager. All deliveries of equipment shall be F.O.B. destination, freight paid by CONTRACTOR. Partial deliveries shall be permitted. DISTRICT will not be responsible for freight or delivery charges not included in the Contract price in Attachment B.

Interface with Other Contractors

CONTRACTOR agrees to cooperate with other Contractors performing services for DISTRICT. For interfaces within this Contract, CONTRACTOR specifically agrees to provide interface specifications deemed necessary for interface with, or data exchange and conversion from, other Contractor's equipment and software systems.

Contractor Tools and Equipment

CONTRACTOR shall provide all materials, tools, documentation, diagnostics, and test equipment necessary to provide the preventative and remedial maintenance of the equipment.

Product Installation

Installation of the hardware provided under this Contract will be CONTRACTOR's responsibility and will be performed with minimum disruption to DISTRICT or DISTRICT's day-to-day business operations. CONTRACTOR will coordinate all installation activities with DISTRICT and utilize professionally recognized installation practices. CONTRACTOR will furnish any necessary materials and components to effect a finished, workmanlike installation according to standard industry practice.

The facilities/sites will be finalized by CONTRACTOR in the Detailed Design Review. CONTRACTOR shall be responsible, at CONTRACTOR's expense, for providing assistance to DISTRICT in obtaining all rights to use such facilities/sites. DISTRICT shall be responsible for the cost of purchase or lease of any facility/site. CONTRACTOR shall also assist DISTRICT in obtaining all necessary licenses and permits required for operation of the System, including, but not limited to, Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) approvals. DISTRICT shall be responsible for paying all FCC and FAA application and licensing fees.

CONTRACTOR, at no additional cost to DISTRICT, shall prepare all documentation necessary to obtain utility services at all facilities/sites.

Construction Designs and Drawings – CONTRACTOR shall submit to the applicable code enforcement authorities all construction plans, designs and drawings, surveys, and pre-construction photos, which shall have been checked by and stamped with the approval of CONTRACTOR. CONTRACTOR shall provide DISTRICT with preliminary versions of such documents as a part of the Detailed Design Review and the final documents prior to system acceptance. All such data submitted shall include type, size, number required, dimensions, specified performance and design criteria, materials and similar data as required by this Contract.

CONTRACTOR's stamp of approval on any construction drawings or specifications shall constitute a representation to DISTRICT that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data of that CONTRACTOR assumes full responsibility for doing so and has reviewed or coordinated each drawing with the requirements of the work and the Contract, and/or agrees to pay all cost of re-designing or modifying other items to accommodate the item(s) submitted.

DISTRICT's review and approval of construction designs and drawings shall be only for conformance with the design concept of the project and for compliance with the information given in this Contract and shall not extend to means, methods, techniques, sequences or

procedures of construction (except where indicated in or required by this Contract) nor to safety precautions or programs incident thereto.

DISTRICT's review and approval of the construction designs and drawings shall not relieve CONTRACTOR from its responsibility for any deviations from the requirements of the Contract unless CONTRACTOR has in writing called DISTRICT's attention to such deviation at the time of submission and DISTRICT has given written approval to the specific deviation, nor shall any approval by DISTRICT relieve CONTRACTOR from responsibility for errors of omissions in the drawings.

Labor, Materials, and Equipment

CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, storage for equipment and materials, and all other facilities necessary for the execution, testing, initial operation, and completion of the project construction work.

Supervision

CONTRACTOR shall supervise and direct the project work completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with this Contract. CONTRACTOR shall be responsible to see that the finished work complies accurately with the requirements of this Contract and all requirements of the applicable inspection agencies.

Site Manager

The CONTRACTOR's Site Manager shall be a dedicated resource solely assigned to this work, with no other job responsibilities, and shall not be replaced without written notice to DISTRICT. The Site Manager shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR.

Concerning Subcontractors

CONTRACTOR shall be responsible for all acts and omissions of CONTRACTOR's subcontractors to the same extent that it is responsible for the acts and omissions of persons directly employed by it.

- A. Nothing in this Contract shall create any contractual relationship between DISTRICT and any subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of DISTRICT to pay or to see to the payment of any monies due any of CONTRACTOR's subcontractors, except as may otherwise be required by law.
- B. Prior to submitting its requisition for payment for a deliverable, CONTRACTOR shall obtain and submit lien waivers from all subcontractors and suppliers providing work, materials, and equipment for the on-site construction for the project.
- C. CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All

coverage for subcontractors shall be subject to all of the requirements stated herein.

Permits

CONTRACTOR shall, with the assistance of DISTRICT, be responsible for preparing applications and paying the applicable filing fees for all routine uncontested construction permits, building inspections and licensing (including, without limitation, routine, uncontested zoning applications) necessary for the prosecution of the work. Also, CONTRACTOR shall be responsible for handling any non-routine or contested applications of the foregoing types, and for handling all other permits and licenses (including, without limitation, all environmental permits and approvals); or, the parties shall work together to effect an alternative solution in accordance with the Change Order process.

Record Drawing

CONTRACTOR shall keep one record copy of the construction plans at the site in good order and annotated to show all changes made during the construction process. These shall be available to DISTRICT and drawings shall be delivered to DISTRICT upon completion of the project.

Safety and Protection

CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and order of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. CONTRACTOR shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection of the property adjacent to the construction work.

Notice to Adjacent Owners

CONTRACTOR shall conduct its operations in a manner which will minimize interference with the normal use of property adjacent to the construction work and shall give owners such property at least twenty-four (24) hours notice of the commencement of work in the area abutting their property. CONTRACTOR shall notify owners of the adjacent properties at least forty-eight (48) hours in advance when prosecution of the work may affect utility service to such adjacent property owners.

Cleaning

CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work; and at the completion of the work, CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the premises, as well as all tools, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy by DISTRICT. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract.

Hazardous Materials

CONTRACTOR shall be responsible for the safe handling, in accordance with applicable law, of hazardous material (if any) introduced by CONTRACTOR at any site at which the work is performed and for keeping on site all material safety data sheets. CONTRACTOR shall have no obligation whatsoever with regard to any other hazardous materials (including, but not limited to, pre-existing conditions) at any site.

Final Submittals

Within four (4) weeks after Acceptance, CONTRACTOR shall submit to DISTRICT the as-built plans which shall indicate any field changes to the original construction plans and specifications, any operation and maintenance manuals, post-construction photos, and additional documentation of the construction as DISTRICT may require from the Detailed Design Review, which documents shall have been checked by and stamped with the approval of CONTRACTOR.

Sign-off is required by CONTRACTOR that sites are acceptable prior to installation of equipment. CONTRACTOR will configure the system, perform system definitions, and, at an appropriate time, train DISTRICT in the sign on/sign off/backup and system management procedures.

Software License

CONTRACTOR's software license agreement is contained in Attachment [letter].

Source Code

In the event CONTRACTOR discontinues support for an item of software furnished under this Contract due to bankruptcy or close of business, and DISTRICT is not in breach of Contract then at DISTRICT's request, CONTRACTOR will grant DISTRICT a license, without charge, under separate terms, to use CONTRACTOR -owned code corresponding to such software for DISTRICT's internal use by its employees, agents, consultants, and independent contractors. Such code may be used solely as a trouble analysis aid for isolating, diagnosing and fixing problems in such software; provided that prior to their access to such code, DISTRICT's relevant agents, consultants, and independent contractors enter into a nondisclosure agreement.

Patents

CONTRACTOR warrants that the products and equipment or a combination thereof furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright.

If DISTRICT notifies CONTRACTOR in writing of the receipt of any claim that the products or equipment or a combination thereof infringes a United States patent or copyright and gives CONTRACTOR information, assistance and exclusive authority to settle and defend such claim, CONTRACTOR at its own expense shall defend, or may settle, any suit or proceeding against DISTRICT so far as based on a claimed infringement which breaches this warranty.

If, in any such suit arising from such claim, the continued use of the product or equipment or a combination thereof which is the focus of the claim, or any significant portion thereof, for the

purpose intended, is enjoined by any court of competent jurisdiction, CONTRACTOR shall, at its expense and option:

- A. procure for DISTRICT the right to continue using the product or equipment or a combination thereof, or the affected portion; or
- B. modify the product or equipment or a combination thereof, so that it becomes non-infringing; or
- C. replace the product or equipment or a combination thereof so that it becomes non-infringing.

If none of these remedies is feasible and the parties agree, CONTRACTOR will accept the return of the product or equipment or combination thereof and reimburse DISTRICT for the full price of the product or equipment or combination thereof less a charge for reasonable wear and tear.

This indemnity does not extend to any suit based upon infringement or alleged infringement of any patent or copyright resulting from the combination by DISTRICT of a CONTRACTOR product or equipment or a combination thereof and products, parts, or components provided by others. The foregoing states the entire liability of CONTRACTOR for patent or copyright infringement by the System and is subject to any limitation of total liability set forth in this Contract.

The provisions of this Section, Patents, shall survive the expiration or termination of this Contract.

Necessary Documentation

CONTRACTOR certifies that it will furnish DISTRICT, if requested, any and all documentation, certification, authorization, license, permit, or registration required by relevant city, county, state or federal units of government. CONTRACTOR further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of the CONTRACTOR to comply with this paragraph shall constitute a material breach of this Contract.

Non-Collusion and Acceptance

The undersigned attests under penalties of perjury that he or she is the contracting party, or that he or she is the representative, agent, member or officer of the contracting party, that he or she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him or her, directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of the Contract.

Contractor Marketing

CONTRACTOR, or any subcontractor or any other organization hired by CONTRACTOR or currently under contract with CONTRACTOR shall not refer to the existence of this Contract in

any advertising, brochures or other written marketing materials distributed to third parties, current customers or prospective customers without first obtaining the prior written consent of DISTRICT.

ATTACHMENT B
COST SCHEDULE

[language incorporating costs as set forth in CONTRACTOR'S proposal]